9 FAM 42.1 NOTES

(CT:VISA-732; 04-21-2005)
(Office of Origin: CA/VO/L/R)

9 FAM 42.1 N1 GENERAL

(TL:VISA-329; 10-26-2001)

The regulations of the Attorney General contained in 8 CFR 211.1(b) (see 9 FAM 42.1 Exhibit I) relating to waivers of documentary requirements for immigrants provide for admission of certain aliens without visas. An unexpired immigrant visa (IV), reentry permit, border-crossing card, or other valid entry document is required of an immigrant under INA 212(a)(7) except as indicated below.

9 FAM 42.1 N1.1 Child Born After Issuance of Visa to Parent

(TL:VISA-481; 10-31-2002)

The child born after the issuance of a visa to a parent is not required to have a visa if the child is:

(1) Born subsequent to issuance of an IV to the accompanying parent within the validity of the parent's immigrant visa (see also 9 FAM 42.1 N2); or

(2) Born during the mother's temporary visit abroad provided:

(a) Admission is within two years of birth; and

(b) Either accompanying parent is applying for readmission upon first return after the birth of the child.

9 FAM 42.1 N1.2 Immigrants Possessing a Permanent Resident Card

9 FAM 42.1 N1.2-1 Returning Resident Aliens

(TL:VISA-394; 04-12-2002)

An unexpired Form I-551, Alien Registration Receipt Card (Machine Readable)(Green Card), may be presented in lieu of a visa provided the alien is returning:

(1) To an unrelinquished residence in the United States after a temporary absence abroad not exceeding one year;

(2) Prior to the second anniversary of the date on which he or she obtained conditional residence under INA 216; or

(3) Within six months of the date of filing a joint petition to remove conditional status obtained under INA 216; and

(4) In possession of a receipt for such filing.

9 FAM 42.1 N1.2-2 Crewmembers

(TL:VISA-184; 01-22-1999)

A visa is not required of a resident alien crewmember who is:

(1) Regularly serving aboard an aircraft or vessel of U.S. registry; and

(2) Returning after a temporary absence abroad in connection with duties as a crewmember.

9 FAM 42.1 N1.2-3 Civilian Employee of U.S. Government or Member of U.S. Armed Forces

(TL:VISA-394; 04-12-2002)

a. A U.S. Government employee or a member of the U.S. Armed Forces may present a Form I-551, in lieu of an immigrant visa (IV) provided they are:

(1) Traveling on U.S. Government orders; and

(2) Returning from a foreign assignment to an unrelinquished lawful residence in the United States.

b. See 9 FAM 42.1 N3.

9 FAM 42.1 N1.2-4 Spouse or Child of U.S. Government Employee or U.S. Service Person

(TL:VISA-184; 01-22-1999)

a. The spouse or child of such U.S. Government employee or member of the U.S. Armed Forces does not require a visa provided the spouse or child:

   (1) Resided abroad while the employee or service person was on duty abroad; and

   (2) Is preceding, accompanying or following-to-join the employee or service person.

b. See 9 FAM 42.1 N3.

9 FAM 42.1 N1.2-5 Expired 10-year Form I-551, Alien Registration Receipt Card (Machine Readable)(Green Card)

(TL:VISA-184; 01-22-1999)

No visa and no transportation letter is required if the alien is in possession of an expired 10-year validity Form I-551, Alein Registration Receipt Card.

9 FAM 42.1 N1.2-6 Replacing Form I-551, Alien Registration Receipt Card (Machine Readable)(Green Card)

(TL:VISA-329; 10-26-2001)

See 9 FAM 42.1 PN1.

9 FAM 42.1 N1.3 Immigrant Possessing Reentry Permit

(TL:VISA-184; 01-22-1999)

An immigrant returning to an unrelinquished lawful permanent U.S. residence after a temporary absence abroad not exceeding two years may present a valid, unexpired reentry permit in lieu of an immigrant visa (IV).

9 FAM 42.1 N1.4 Refugee

(TL:VISA-184; 01-22-1999)

A refugee travel document issued to a lawful permanent resident (LPR) shall

be regarded as a reentry permit.

9 FAM 42.1 N1.5 Immigrants Without Valid Travel Document

(CT:VISA-732; 04-21-2005)

An immigrant returning to an unrelinquished residence in the United States who does not possess an immigrant visa (IV), a Form I-551, or a valid re-entry permit may be granted a waiver under INA 211(b), if the *Department of Homeland Security (DHS)* district director of the port of entry is satisfied that there is good cause for failure to present the document.

9 FAM 42.1 N1.5-1 Beneficiaries of Private Law 95-53

(TL:VISA-394; 04-12-2002)

An alien employee of the American University of Beirut who seeks to enter the United States immediately following employment may present an Form I-551, or a boarding letter issued by the U.S. consul or immigration officer in lieu of an immigrant visa (IV).

9 FAM 42.1 N1.5-2 Special Agricultural Workers

(TL:VISA-394; 04-12-2002)

Certain agricultural workers who adjusted status under INA 210, and remain under such status, may present Form I-688, Temporary Resident Card, in lieu of an IV if returning to an unrelinquished residence within one year after temporary absence abroad.

9 FAM 42.1 N1.5-3 Temporary Residents Adjusted Under INA 245A

(TL:VISA-394; 04-12-2002)

Aliens granted temporary resident status under INA 245A, and remaining under such status, may present Form I-688, Temporary Resident Card, in lieu of an IV if returning to an unrelinquished residence within 30 days after absence abroad, provided that the aggregate of such absences does not exceed 90 days.

9 FAM 42.1 N2 CERTAIN ALIEN CHILDREN

NOT REQUIRED TO OBTAIN VISAS

9 FAM 42.1 N2.1 Child Under Two Years of Age Born of Permanent Resident Alien Mother During Temporary Visit Abroad

(TL:VISA-184; 01-22-1999)

See 9 FAM 42.1 N1.1.

9 FAM 42.1 N2.2 Requiring Reentry Document of Child's Parent

(TL:VISA-329; 10-26-2001)

The provisions of 9 FAM 42.1 N2.1 apply only if the alien parent is in possession of a valid Form I-551, a valid reentry permit, or a SB-1 visa. With respect to 22 CFR 42.1(d), it is irrelevant whether the visa issued to the accompanying parent is an initial visa or a replacement visa.

9 FAM 42.1 N2.3 Evidence of Parent-Child Relationship

(TL:VISA-49; 10-30-1991)

To facilitate the admission of children under the provisions of 9 FAM 42.1 N2.1, consular officers shall instruct parents to have with them documentary evidence of the parent-child relationship.

9 FAM 42.1 N2.4 No Immigrant Visa (IV) Required for Child Born After Parent Issued Replacement Visa

(TL:VISA-184; 01-22-1999)

It is irrelevant whether the visa issued to the accompanying parent is the original visa or a replacement visa.

9 FAM 42.1 N3 MEMBERS OF U.S. ARMED FORCES, THEIR SPOUSES AND CHILDREN

9 FAM 42.1 N3.1 Interpreting Term "Member of U.S. Armed Forces"

(TL:VISA-19; 02-27-1989)

The term "member of the U.S. Armed Forces" as used in 22 CFR 42.1(b) embraces military personnel only. It does not include civilians employed by or attached to the Armed Forces or working for firms under contract to the Armed Forces.

9 FAM 42.1 N3.2 Spouse of U.S. Armed Forces Member or U.S. Government Employee Who Marries Abroad

(TL:VISA-184; 01-22-1999)

The provisions described in 9 FAM 42.1 N1.2-4 relating to the spouse or child of a member of the U.S. Armed Forces or of a civilian employee of the U.S. Government stationed abroad, apply to an alien who:

(1) Has gone abroad accompanying or following-to-join such a spouse; or

(2) Marries a member of the U.S. Armed Forces or a U.S. Government civilian employee while abroad, even if the alien has been abroad more than one year, provided the alien would have been eligible to receive a visa as a returning resident alien at the time the marriage occurred.

9 FAM 42.1 N3.3 Use of Form I-551, Alien Registration Receipt Card (Machine Readable)(Green Card), by Alien Armed Forces Members Discharged Abroad

(TL:VISA-329; 10-26-2001)

An alien member of the U.S. Armed Forces previously lawfully admitted for permanent residence and serving abroad is considered to be constructively present in the United States. Such an alien discharged abroad may apply for readmission using the Form I-551, provided the stay abroad does not exceed one year from the date of discharge.

9 FAM 42.1 N3.4 Spouse and Children of U.S. Armed Forces Members or U.S. Government Civilian Employees Stationed Abroad

(CT:VISA-732; 04-21-2005)

In interpreting the provisions of 8 CFR 211.1(b)(1) waiving the visa requirement for the spouses and children of Armed Forces members or U.S. Government civilian employees serving abroad (see 9 FAM 42.1 N1.2-4), *Department of Homeland Security (DHS)* has held that:

(1) The spouse or child need not physically accompany the Armed Forces member or civilian employee in order to benefit from the visa waiver if the alien is preceding or following-to-join the member or employee;

(2) An alien who does not physically accompany the Armed Forces member or employee to the United States must possess evidence that he or she is the spouse or child of a member or employee who was stationed abroad on official orders and that the spouse or parent was previously lawfully admitted for permanent residence; and

(3) To benefit from the waiver, it is not material whether the member or employee was discharged abroad, or whether the spouse or child is residing in a country different from that in which the principal alien is stationed, provided all other criteria for the waiver are met.

9 FAM 42.1 N4 PAROLE

(CT:VISA-732; 04-21-2005)

a. In addition to the categories of aliens listed in 9 FAM 42.1 N1 who are not required to obtain immigrant visas (IV), there is a parole procedure permitted by INA 212(d)(5) under which aliens may also enter without having obtained a visa. There are three types of parole: advance parole, humanitarian parole and significant public benefit parole. Advance parole authority generally rests with a domestic *DHS* District Office. Humanitarian parole and significant public benefit parole authority generally rests with the *DHS* Headquarters Office of International Affairs (IAO) Parole and Humanitarian Assistance Branch (PHAB).

b. Parole should not be used to circumvent normal visa issuing procedures, including non-current priority dates for preference IV categories. Nor should it be used to avoid meeting host country or U.S. legal

requirements in adoption cases. Consular officers must inform potential applicants that a recommendation by the consular officer or the Department does not guarantee the authorization of parole.

c. Neither the Department nor consular officers have the authority to approve or extend any type of parole under any circumstances. Parole is a discretionary power of the Attorney General and is delegated to *DHS.*

9 FAM 42.1 N4.1 Advance Parole

(CT:VISA-732; 04-21-2005)

a. In some instances, *DHS* authorizes advance parole to persons in the United States whose immigration status is under review (e.g., pending an asylum hearing or an adjustment of status) but who need to travel abroad. Persons seeking advance parole generally must apply and be approved before departing the United States. Advance parole is usually approved for a specific period of time, and the alien must return to the United States before its expiration.

b. *DHS*, upon authorizing advance parole, issues a Form I-512, Authorization of Parole of an Alien into the United States, directly to the parolee to allow him or her to return to the United States. Therefore, there is usually no consular role in advance parole cases. However, it is possible that such persons might seek assistance from consular officers after such parole has expired or the Form I-512 is lost. As stated previously, consular officers DO NOT have the authority to approve or extend parole. The consular officer should refer the applicant to the *DHS* Headquarters Office of International Affairs (IAO) Parole and Humanitarian Assistance Branch (PHAB). (See 9 FAM 42.1 N4.7.)

9 FAM 42.1 N4.2 Humanitarian Parole

(CT:VISA-732; 04-21-2005)

a. Humanitarian parole is an extraordinary measure, sparingly utilized to bring an otherwise inadmissible alien to the United States for a temporary period of time due to a compelling emergency. The consular officer must stress to potential humanitarian parole applicants that authority to authorize parole rests solely with *DHS.*

b. Consular officers should not routinely suggest humanitarian parole as an option to the applicant; however, they may assist applicants in applying directly to *DHS*. (See 9 FAM 42.1 PN2.) Only under certain compelling circumstances may a consular officer recommend humanitarian parole to

DHS. This is an extraordinary measure that should be resorted to in only the most exigent circumstances. Humanitarian parole should be a last option for persons who:

(1) Are otherwise ineligible for a visa;

(2) Cannot benefit from a waiver; and

(3) Have urgent humanitarian reasons to travel to the United States.

9 FAM 42.1 N4.3 Significant Public Benefit Parole (SPBP)

9 FAM 42.1 N4.3-1 SPBP Cases Recommended by Department

(CT:VISA-732; 04-21-2005)

a. In rare instances, the Department may seek Significant Public Benefit Parole (SPBP) (formerly known as public interest parole) in cases where clear U.S. Government interest and a need to admit an individual to the United States as quickly as possible exists. The *DHS* Headquarters *PHAB* will notify posts of parole approval in such cases via a VISAS NINETY-ONE cable authorizing the post to issue a transportation letter. The *DHS* Headquarters *PHAB* will also inform the *DHS* port director at the *port of entry (POE)* and the appropriate domestic *DHS* District Director that SPBP has been authorized.

b. By law (INA 212(d)(5)(B)), SPBP cannot be used in lieu of normal refugee processing except in compelling reasons in the public interest with respect to a particular alien. In order to meet the Department's criteria, an individual must be in imminent danger and unable to travel to a third country for refugee processing through the United Nations.

c. Certain Child Abductors in Hague Cases: Pursuant to 40.103 N5.2, an alien who takes an abducted child to a country which is a party to the Hague Convention on the Civil Aspects of International Child Abduction is not ineligible under INA 212(a)(10)(C). However, such persons are sometimes found ineligible under INA 214(b), 212(a)(9)(B) or some other grounds. When the presence of such an alien is required in the United States in order to attend a custody hearing concerning the abducted child, and the alien is ineligible for a nonimmigrant visa (NIV), the consular officer must contact the appropriate officer in CA/OCS/CI. CA/OCS/CI, working with CA/VO/F/P and the post, will seek SPBP for the alien if appropriate.

9 FAM 42.1 N4.3-2 Law Enforcement Agency (LEA) and Intelligence Agency SPBP Cases

(TL:VISA-429; 06-25-2002)

Department recommended SPBP cases should not be confused with the more commonly encountered SPBP cases requested by law enforcement agencies (LEAs) through Department of Justice channels. LEA SPBP cases involve an alien whose presence is necessary in connection with legal cases or investigations. These cases will generally come to a post's attention via a VISAS NINETY-ONE cable authorizing the issuance of a transportation letter. Other types of non-Department cases are those requested directly by intelligence agencies.

9 FAM 42.1 N4.4 Parole Does Not Confer Immigration Benefits

(CT:VISA-732; 04-21-2005)

a. Consular officers shall inform persons authorized parole that entry under parole does not confer permanent resident status. Parole does not in and of itself confer immigration benefits. Parole is authorized for a specific period of time, and parolees must depart the United States at the end of their parole authorization, adjust to immigrant status (usually based on a previously approved petition), or seek an extension of the parole through a domestic *DHS* office. Persons in parole status may not travel abroad and then return to the United States without advance parole authorization from *DHS*. (See 9 FAM 42.1 N4.1.)

b. Parolees, who enter under SPBP frequently seek asylum in the United States, and, assuming their asylum claim is approved, eventually adjust status to legal permanent resident. Parolees may apply for permission to work. Parolees normally do not receive the resettlement assistance, which is provided to refugees. Therefore, it is imperative that parole requests identify potential sources of financial support.

c. Aliens may apply for extensions of parole status, but *DHS* grants such requests on a case-by-case basis, and approves them only for a specific period of time. If the VISAS NINETY-ONE cable limits the duration of stay in the United States, as it usually will, the consular officer must so inform the alien before travel.

9 FAM 42.1 N4.5 Medical Examination Requirement for Some Parolees

(CT:VISA-732; 04-21-2005)

The *DHS* Headquarters *PHAB* will inform the post if a parolee must have a medical examination performed by a post panel physician. (See 9 FAM 42.1 PN6.)

9 FAM 42.1 N4.6 Applicability of INA 212(a) to Parolees

9 FAM 42.1 N4.6-1 General

(CT:VISA-732; 04-21-2005)

a. *DHS* can parole an alien even if the alien is subject to INA 212(a) ineligibility. When *DHS* authorizes parole, it waives all known ineligibilities for parole purposes only. In deciding whether to exercise its discretion to authorize parole, *DHS* will carefully consider any ineligibilities the alien may have and weigh that against the humanitarian need or significant public benefit of the alien's proposed travel. The fact that an individual is in opposition to his or her country's current regime is not in itself sufficient reason for a parole recommendation, particularly if the person has a past record of criminal activity or of participating in the persecution of others. The Department would not generally support a parole recommendation for persons who would be ineligible under INA 212(a) and who would likely be ineligible for asylum under INA 208(b)(2)(A). INA 208(b)(2)(A) generally precludes *DHS* from granting asylum to an alien who:

   (1) Has ordered, incited assisted or otherwise participated in the persecution of others based on race, religion, nationality, membership in a particular social group, or political opinion;

   (2) Has been convicted of a particularly serious crime and constitutes a danger to the community in the United States;

   (3) Is believed to have committed a serious non-political crime outside the United States;

   (4) Is inadmissible under INA 212(a)(3)(B) or deportable under INA 237(a)(4)(B); or

   (5) Is firmly resettled.

b. If a consular officer determines that ineligibilities unknown to the *DHS* Headquarters PHAB exist, the consular officer must inform PHAB and the

Department (CA/VO/F/P) and make a recommendation on the case. (See 9 FAM 42.1 PN4.2.)

9 FAM 42.1 N4.6-2 Applicability of INA 212(a)(4) – Public Charge

(CT:VISA-732; 04-21-2005)

a. Although *DHS* has the authority to authorize parole notwithstanding that the alien may be ineligible for a visa under INA 212(a)(4), prospective parolees generally will be required to demonstrate that they have access to sufficient funds to cover the costs of their stay. This is especially critical if parole is sought for medical reasons. In such instances, the sponsor's offer to pay for the planned medical procedure must be supported by strong financial evidence of the sponsor's ability to pay. Because medical treatment can in some instances cost thousands of dollars, consular officers must apply realistic standards in evaluating the sponsor's ability to pay.

b. In those instances where the applicant has applied directly to *DHS* for humanitarian parole, and *DHS* has indicated in the notification of parole authorization that the applicant has the necessary financial resources, the consular officer must review the financial evidence to determine whether such resources are indeed available. Should it become clear that the applicant *can not* qualify under INA 212(a)(4), the post must notify the *DHS* Headquarters *PHAB* of the ineligibility. (See 9 FAM 42.1 PN4.2.)

9 FAM 42.1 N4.7 Assisting Applicant to File Humanitarian Parole Request

(CT:VISA-732; 04-21-2005)

a. Posts are under no obligation to forward to *DHS* a humanitarian parole request on behalf of someone who is not the subject of the post's recommendation for parole. However, posts frequently refer the applicant directly to the *DHS* Headquarters *PHAB*. When doing so, post should provide the applicant with the following:

(1) Form I-131, Application for Travel Document;

(2) Form I-134, Affidavit of Support; and

(3) Address of the *DHS* Headquarters *PHAB*:

Department of Homeland Security

425 I St NW
Attn: Parole and Humanitarian Assistance Branch
Washington, DC 20536

b. Interested parties in the United States may submit parole requests directly to the *DHS* Headquarters *PHAB*.

9 FAM 42.1 N4.8 Recommending Humanitarian Parole

(TL:VISA-429; 06-25-2002)

See 9 FAM 42.1 PN2.

9 FAM 42.1 N4.9 Requesting Significant Public Benefit Parole

(TL:VISA-429; 06-25-2002)

See 9 FAM 42.1 PN3.

9 FAM 42.1 N4.10 Processing Parole Cases

(CT:VISA-732; 04-21-2005)

a. *DHS* will notify the post by a VISAS NINETY-ONE cable when parole has been authorized on behalf of an alien. The cable will advise the post of:

(1) The identity of the parole beneficiary;

(2) The length of time for which parole has been authorized;

(3) Any known grounds of inadmissibility; and

(4) Whether the applicant has sufficient financial resources (when applicable).

b. The cable will request the post to check the CLASS database and issue a transportation letter authorizing the carrier to transport the alien without a visa. A copy of the VISAS NINETY-ONE cable should be attached to the transportation letter, which is addressed to the supervisory immigration inspector at the intended POE.

c. See 9 FAM 42.1 PN4 for processing instructions.

9 FAM 42.1 N4.11 Validity of Parole Approval

9 FAM 42.1 N4.11-1 Humanitarian Parole

(CT:VISA-732; 04-21-2005)

Although humanitarian parole authorization assumes that, given the emergent nature of the applicant's situation, he or she will depart for the United States as soon as possible, occasionally the consular officer will encounter someone who delays his or her departure. In those instances where the consular officer determines that the circumstances upon which the original parole request have not changed and that a reasonable delay was beyond the applicant's control, the consular officer may process the case. However, if the prospective parolee has delayed entering the United States beyond the time limit specified in the VISAS NINETY-ONE cable and the alien still wishes to travel in parole status, the consular officer must advise the applicant to reapply to the *DHS* Headquarters *PHAB* for parole authorization. *DHS* will reevaluate the new request and, in light of the current situation, authorize or deny the application accordingly.

9 FAM 42.1 N4.11-2 SPBP

(CT:VISA-732; 04-21-2005)

The terms of SPBP authorization are often more restrictive than those of humanitarian parole authorization. For example, a VISAS NINETY-ONE cable for SPBP may require the consular officer to prepare the transportation letter within as few as seven days of the date of the cable (vice the four-month time limit that is typical with humanitarian parole). Also, *DHS* often grants SPBP for a shorter duration than humanitarian parole. The consular officer must pay careful attention to the VISAS NINETY-ONE cable to ensure that he or she issues the transportation letter within the time specified in the cable.

9 FAM 42.1 N4.12 Parole and Immigrant Visa Cases

9 FAM 42.1 N4.12-1 Adoption

(TL:VISA-429; 06-25-2002)

Occasionally, adopted children may be authorized humanitarian parole to allow them to travel to the United States with the adopting parent(s). Parole must not be used to circumvent local or U.S. adoption laws and requirements, and is not a panacea for problem cases. There are situations

in which parole is a possible option; however, consular officers must consult with the CA/VO/F/P officer responsible for adoption issues.

9 FAM 42.1 N4.12-2 Other Immigrant Visa Cases

(TL:VISA-429; 06-25-2002)

On rare occasions, humanitarian parole may be granted to immigrant visa (IV) beneficiaries who have "aged out" or other persons who are not immediately eligible for an IV. As with any humanitarian parole case, there must be compelling humanitarian circumstances. For example, if the disabled child of a fourth preference IV beneficiary turns 21 years old before an IV can be issued, humanitarian parole might be an option. Consular officers are encouraged to consult with the CA/VO/F/P officer responsible for parole.

9 FAM 42.1 N4.13 Parole and Asylees/Refugees

(CT:VISA-732; 04-21-2005)

a. Posts are occasionally contacted by persons who entered the United States as refugees or who were granted asylum, and who subsequently departed without obtaining a Form I-571, Refugee Travel Document (See 9 FAM Appendix O 1800). If such a person has been outside of the United States for one year or less, the consular officer should refer him or her to the appropriate *DHS* District Office abroad, where he or she can use Form I-131, Application for Travel Document, to apply for a Form I-571. If such a person has been outside of the United States for more than one year, the consular officer may refer him or her to the *DHS* Headquarters *PHAB*, where he or she can apply for humanitarian parole (see 9 FAM 42.1 N4.7).

b. Refugees and asylees who obtained a Form I-151, Alien Registration Receipt Card (Green Card), and traveled abroad, but who are unable to return due to having an expired, lost or stolen Form I-151, are not eligible for refugee processing. They are, however, potentially eligible for humanitarian parole. Regardless of how long such a person may have been outside of the United States, the consular officer should refer him or her to the *DHS* Headquarters *PHAB* (see 9 FAM 42.1 N4.7).